

Mount Vernon Board of Adjustment
Minutes
July 5, 2012

Meeting was called to order at 5:30 p.m. Members present: Moe Richardson, Lori Boren, Pat Charboneau, Liz Sparks and Gary Ulch. Also in attendance: City Administrator Michael Beimer, Zoning Administrator Matt Siders, William Prowell, attorney for Hallmark Care Facility, Robert Hatala, City Attorney and Denny Dietrich, owner of Gary's Foods.

1. Approval of Agenda.
2. Training for board members on Conditional Use Permit procedures.
3. Public Hearing on request for a Conditional Use Permit for expansion of Hallmark Care Facility. Discussion and possible action. Richardson opened the public hearing. City Administrator Michael Beimer explained that a permit had been submitted to the previous Zoning Administrator and after due consideration he found that the setbacks were in compliance but no permit was issued as this use required a Conditional Use Permit first. After his resignation, Beimer reviewed it and found it to be in conformance with the setbacks but because of what it is and the zone it is in, a building permit could not be issued without a Conditional Use Permit. Beimer went on to say that Planning and Zoning held a public hearing and after the hearing the recommendation was that the Board of Adjustment grant the Conditional Use Permit if they so desired. This would be contingent upon any conditions that Board of Adjustment wishes to apply that are reasonable and proper for this district as far as operations, buffers, landscaping, traffic patterns and anything else that would be applicable to this type of business, which is defined in the Code of Ordinances as a convalescence home or nursing care facility.

William Prowell, attorney for the applicant, gave a brief summary of the application before them and the process it had gone through up to this point. He said that after the Planning and Zoning meeting, they had met with Gary's and Lange's to discuss the access issue that was a concern, which he said was a separate issue from the conditional use permit. Richardson was concerned that there was not legal access. Prowell said that there is an easement on the Casey's property but if someone goes on to use a piece of property for the amount of time that this has been going on, in his opinion that was legal access. Denny Dietrich of Gary's Foods said that there is some dispute about whether there is an easement or not and had concerns about a round-a-bout coming through and closing the south end of the easement. Richardson asked Dietrich if he was willing to grant an easement on his property. Dietrich said

he was willing to cooperate and share expenses on the maintenance. Bob Hatala, City attorney, said that it wasn't up to the city to acquire an easement across someone else's property, it would be up to the courts to do this. Hatala also said that he has spoken to Denny Dietrich and Bill Lange and they expressed a desire to enter into an agreement of some kind with respect to maintenance to that area. The main concern was with a proposed round-a-bout and the south entrance.

Richardson said that if there was legal access he didn't see where Board of Adjustment would have much of an objection. But from a practical matter, he thought that this was an opportunity to not perpetuate non conforming nature continually and clear up what he has heard from Lange's and Gary's Foods, an access situation traveling over their property. Hatala said that as the code points out, Board of Adjustment can impose certain conditions. He went on to say that if the access and the maintenance is the final consideration about whether a permit should be granted or not, he would suggest working out an agreement in order to move forward. The Board of Adjustment could require Hallmark Care Center to have access and make conditions of improvements that they make on their property as part of the expansion, but it would be inappropriate for the City to put restrictions on when the access needs to be required.

Board members questioned whether setback requirements were met on the proposed site plan. Beimer said that the permit had met all of the requirements for setbacks but could not be issued until a Conditional User Permit was approved. Additionally, the proposed addition would not increase the number of residents in the facility, only allowing for bigger accommodations for the current residents of the nursing home. Additional areas of concern by the Board were maintenance of the access, parking and buffers along residential property lines.

Prowell brought up the City's request to combine the two lots, which they were not interested in doing at this time. Beimer said that this was not a requirement for a Conditional Use Permit and Board of Adjustment did not need act on this.

After no further discussion, the following Motion was made by Liz Sparks, seconded by Pat Charboneau, and adopted with 4 votes in favor and 0 votes opposed. Gary Ulch was not in attendance for this portion of the meeting.

The Board of Adjustment approves the Conditional Use Permit requested by ABCM Corporation for the expansion of the Hallmark Care Center located at 215 Highway 30 West, Mount Vernon, Iowa subject to each of the following conditions:

1. Parking Spaces and Set-backs: Mount Vernon City Staff confirms that the planned expansion complies with the parking spaces and lot line setbacks required by the Zoning Ordinance for the General Commercial District; and
2. Residential Buffer: As part of the planned expansion, the Applicant will install a landscape and/or privacy fence buffer along the north property line where it abuts the residential neighborhood as approved by Mount Vernon City Staff; and
3. Identifying Access Drive on Casey's Property: Under the Access Easement Agreement dated August 26, 1999 between Casey's Marketing Company and ABCM Corporation, the Applicant will use its best efforts to obtain Casey's cooperation to assure that the access drive area is kept free of parked vehicles and other obstructions and the drive area is marked to identify for the public the portion of the concrete parking lot that is the access drive to the Cherry Ridge facility; and
4. Improving Access Drive to Hallmark Care Center: As shown on the drawings for the planned expansion, the roadway located on the Applicant's property will be paved with asphalt or concrete and approved by the Mount Vernon City Engineer. The paving will be completed within 18 months of the issuance of the building permit. Alternatively, the Applicant can meet this condition if it enters into a written agreement with the adjacent landowners (Gary's Foods and Lange's service station) for the improvement and maintenance of the access roadway across the three properties and the terms of such agreement are approved by the City of Mount Vernon.

Meeting adjourned at 7:25 P.M.

Respectfully submitted,
Marsha Dewell
Administrative Assistant